the court, went to view the scene of the crime, may not be ground for a new trial; yet a new trial will be granted because, while so doing, they interrogated a passer-by as to the identity of a certain house, whose distance from the scene of the crime was material. There is a difference of opinion between the authorities as to whether the prisoner must accompany the jury in their inspection of the premises ("Thomp. Trials," sections 886, 887); but all concur that evidence cannot be taken on such occasions. The settled practice is for the court to appoint "showers," but merely for the purpose of pointing out the locality ("Thomp. Trials," sec. 914; "Bailey, Proc." 228; *State* v. *Lopez*, 15 Nev. 407). While there is conflict upon the point, it has been held, as in *People* v. *Hope*, 62 Cal. 291, that the bare fact of the jury having visited the scene of a capital offense, with the trial of which they are charged, though made without leave of the court, is not *per se* ground for a new trial. Some prejudice must appear, as in the present case. *State* v. *Tilghman*, 33 N. C. 513.

*Aggravated Assault—Instructions to the Jury.—Grayson* v. *State*, 42 S. W. Rep. 293 (Tex.). A jury was charged that if the evidence tended to show that the assault was made with premeditated design, and by the use of means calculated to inflict great bodily injury, the defendant was guilty of an aggravated assault. *Held*, erroneous. An assault and battery, to become aggravated, must result in serious bodily injury or such an injury as is attended with danger.

*Burglary—Allegation in Indictment as to the Ownership of Property.—Lamater* v. *State*, 42 S. W. Rep, 304 (Tex.). In an indictment for burglary it was alleged that an entry was made into a school building with intent to steal certain property belonging to the janitor of the building. The court charged the jury that, "A person who is in the direct control of a house, and exclusive management and control of property, is, for the purposes of law, the occupant of such house and owner of such property." *Held*, such charge was authorized, notwithstanding the general property was shown to be in the pupils'.

## CARRIERS.

*Connecting Carriers—Duties—Limitation of Liability—Through Shipments.—Bird et al.* v. *Southern R'y Co.*, 42 S. W. Rep. 451 (Tenn.). Plaintiff consigned a box of fruit trees to a place by a route covering parts of three connecting and distinct lines of railway. When the intermediate carrier delivered the trees to the ultimate carrier, the latter immediately informed the intermediate carrier that the destination was a prepay station and that they would not forward the trees until all charges were paid. Thereupon the intermediate carrier took no action for eighteen days, as a consequence of which the trees became worthless. Intermediate carrier held liable. An intermediate carrier is entitled to any exemption contained in a bill of lading issued by the initial carrier, *Halliday* v. *R'y Co.*, 70 Mo. 159; but such exemption does not relieve him from responsibility for his own negligence. The intermediate carrier was charged with a duty to inform either the shippers or the initial carrier that the destination was a prepay station and in not doing so was guilty of negligence.

*Carriers—Who are Passengers.—McNulty* v. *Penn. R. R. Co.*, 38 Atl. Rep. 524 (Penn.). Plaintiff's husband contracted with the defendant company to do certain work upon a bridge on its line of railway, the company agreeing to pay him $1.20 per day and to transport him to and from his home to the

place where the work was to be performed. While being thus transported he was killed by a freight train crashing into the rear of the passenger car in which he was riding. *Held*, in an action by the plaintiff to recover for the death of her husband, that when the deceased entered the train for carriage he ceased to be an employee, but, under the contract, became a passenger. Consequently the rule regarding co-employee did not apply and therefore the negligence of the engineer of the freight train in causing the collision did not relieve the company. But see *Baltimore & P. R. Co.* v. *Jones*, 75 U. S. 439, Chase's Cases on Torts, p. 223.

*Carriage by Sea—Exceptions in Contract—Negligence—Jettison of Cattle.—Compaina de Navigacion La Flecha* v. *Brauer et al.*, 18 Sup. Ct. Rep. 12. In an action in admiralty against a steam navigation company, it appeared that a certain number of cattle were received under a bill of lading stipulating that they were to be "at owner's risk; steamer not to be held liable for accident to or mortality of the animals, from whatever cause arising." During the trip the vessel encountered some rough weather and the master and crew, becoming panic-stricken, drove overboard 126 head of cattle. Such action appearing from the testimony to be unnecessary and due to the incompetency of the crew, *held*, that there could be a recovery. The ordinary contract of a common carrier by sea involves an obligation on his part to use due care and skill in navigating the vessel and in carrying the goods. An exception, in a bill of lading, of perils of the sea, or other specified perils, does not excuse him from that obligation, nor exempt him from one of those perils, to which the negligence of himself or his servants has contributed. *N. J. Steam Nav. Co.*, v. *Merchants B'k*, 6 How. 344. *Transportation Co.* v. *Downer*, 11 Wall. 129. A similar English case is that of *Lenro* v. *Dudgeon*, 17 Law T. (N. S.) 145.

CONTRACTS.

*Landlord and Tenant—Coal Leases—Interpretation—Liability of Lessee for Royalty.—Wright et al.* v. *Warrior Run Coal Co.*, 38 Atl. Rep. 491 (Pa.). Plaintiff leased to defendants certain coal lands. The lease provided for the payment of a royalty of fifteen cents per ton for all coals mined above the size of chestnut coal, seven and one-half cents for the chestnut, and nothing on the smaller sizes. At the time of the making of the contract there were mined and marketed in that locality seven sizes of coal, including the chestnut. Of the total amount produced, fifteen per cent. was chestnut and nine per cent. smaller, both of which were the incidental product of preparing the other sizes. The demand was greatest for the larger sizes, and very slight for the chestnut. After a few years the demand for the larger sizes diminished, and for the smaller sizes increased to such an extent that it became profitable to produce a greater proportion of smaller coal. In preparing this by breaking up the larger sizes a greater proportion of chestnut and smaller coal was necessarily produced, which also found a profitable market. In an action by the plaintiffs to recover a royalty on the increased production of the chestnut and smaller sizes, the court held that for all chestnut above fifteen per cent, and smaller coal above nine per cent, the average of each produced at the creation of the contract, the lessee should pay a royalty of fifteen cents per ton. Mitchell, J., (dissenting) held the royalty should not be allowed, inasmuch as it was in effect "making a new contract for the parties, in the light of subse-